



UNITED STATES DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1784

RIN 0572-AC28

Section 306D Water Systems for Rural and Native Villages in Alaska

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS), an Agency of the United States Department of Agriculture (USDA), is modifying its existing regulations to establish a separate regulation for making grants to rural or Native Alaskan Villages under the Rural Alaska Village Grant (RAVG) Program. The existing RAVG regulation will be relocated to its own section and modified to conform with streamlined processes established through a Memorandum of Understanding among USDA, RUS; The United States

Department of Health and Human Services, Indian Health Service (IHS); The State of Alaska, Department of Environmental Conservation (DEC); and the Alaska Native Tribal Health Consortium (ANTHC). The grants will be provided directly to a rural or Native Alaskan Village or jointly with either DEC or ANTHC for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those Villages through removal of dire sanitation conditions.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jacqueline M. Ponti-Lazaruk, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1548, Room 5147, Washington, DC 20250-1590. Telephone number: (202) 690-2670, Facsimile: (202) 720-0718.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 553(a) (2), this final rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 et seq.), including the requirement to provide prior notice and an opportunity for public comment. Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this final rule are pending approval by OMB pursuant to the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35) under control number 0572-AC28 . The paperwork contained in this rule will not be effective until approved by OMB.

E-Government Act Compliance

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.760. This catalog is available electronically through the free CFDA website on the Internet at <http://www.cfda.gov>. The print edition may be purchased by calling the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or ordering it online at <http://bookstore.gpo.gov>.

Executive Order 12372

All projects funded under this part are subject to Executive Order 12372 (3 CFR, 1983 Comp., p. 197), which requires intergovernmental consultation with State and local officials. These requirements are set forth in U.S. Department of Agriculture regulations 2 CFR Part 415, Subpart C, and RD Instruction 1940 J. In the case of grants made to DEC and ANTHC, DEC and ANTHC will certify that the requirements listed in paragraphs a-e are included in their agreements with the rural or native villages.

Federally Recognized Tribes, however, are exempt from this process as set forth in the U.S. Department of Agriculture regulations 7 CFR 1940.453(c) and RD Instruction 1940.J which addresses applications from Indian tribes. Specifically, applications from

federally recognized Indian tribes are not subject to the requirements of this subpart. However, Indian tribes may voluntarily participate in the review system explained in this Subpart and are encouraged to do so. When a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises or entities, Rural Development will, on request of such Tribal Government transmitted through OMB, require that applications for assistance be subject to review by the Tribal coordinating mechanism as though it were a part of the consultation process under this Subpart.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

National Environmental Policy Act Certification

RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175

Executive Order 13175 imposes requirements on RUS in the development of regulatory policies that have tribal implications or preempt tribal laws. RUS has determined that this final rule has a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Therefore, in anticipation of the publication of this final rule, RUS focused its quarterly Tribal Consultation webinar and teleconference process during the summer of 2013 on the Rural Alaska Village Grant program. A pre-consultation briefing was held on June 20, 2013 to provide a thorough briefing of the Rural Alaska Village Grant program and the regulatory changes under consideration. This was followed by a Tribal Consultation webinar and teleconference on July 17, 2013. Input received by RUS through the Tribal Consultation process was considered alongside comments to the proposed rule and utilized in drafting the final rule. If a Tribe has questions about the Tribal Consultation process please contact Rural Development's Native American Coordinator at (720) 544-2911 or AIAN@wdc.usda.gov.

Background

The Rural Utilities Service, a Rural Development agency of the United States Department of Agriculture (RUS), works to improve the quality of life in rural America by providing investment capital, in the form of loans, loan guarantees, grants and technical assistance for the deployment of rural telecommunications, broadband, electric, water and environmental infrastructure. RUS loans, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation, and cultural and historic preservation.

Comments

RUS published a proposed rulemaking in the *Federal Register* on December 20, 2013 at 78 FR 77009 seeking comments on modification to an existing regulation and the establishment of a separate regulation for the RAVG program. The Agency received one comment from an outside Federal agency, the US Army Corps of Engineers Alaska District Hydraulics Section, along with two public submissions from the Alaska Native Tribal Health Consortium (ANTHC) and the State of Alaska Department of

Environmental Conservation (DEC) regarding the proposed rule. The commenters' responses are summarized below with the Agency's responses as follows:

Issue 1: ANTHC and DEC stated that the definition of dire sanitation conditions is problematic and suggested modifying the existing definition because it does not allow identified deficiencies to be addressed until they have already undermined public health and until the deficiency is far more difficult and expensive to correct.

Response: RUS agrees in part with the commenters and will modify parts 1 and 2 of the definition of *dire sanitation conditions* as presented by ANTHC in their comment submission. RUS is also adjusting part 3 of the definition so that it will allow an appropriate Federal agency (such as the Center for Disease Control) or a regulatory Agency of the State of Alaska to determine if the drinking water and/or sewer system does not meet regulatory requirements. RUS, however, disagrees with the proposed addition of a 4th part of the definition that would allow "a professional engineer to determine if existing water and/or wastewater system components have exceeded their design life and replacements or upgrades are required to extend the service life to prevent loss of service or ability to meet regulatory or safety standards." The language as proposed would allow for any professional engineer, regardless of background, association, etc., to make a determination of need based on their personal assessment of a systems useful life. This approach would allow for inconsistencies in determinations and a potential for inaccurate prioritization of need. Allowing a professional engineer to determine whether a system has exceeded its useful life and is in need of repairs or replacement is not comparable to determining whether a dire sanitary need exists. Further, the commenters do not specify whether the professional engineer would be a

private or public engineer. In the case of a private professional engineer, the Agency is concerned that there would be an incentive to prioritize the largest, most costly, projects to maximize revenues, rather than an unbiased prioritization of need. Section 306D of the Consolidated Farm and Rural Development Act authorizes the Secretary of Agriculture to “make grants to the State of Alaska for the benefit of rural or Native villages in Alaska to provide for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those villages, and to prioritize the allocation of grants based on health and sanitation conditions.” Given the limited grant funds available and the existing conditions in many native Alaskan villages, the Agency has determined that distinguishing between general lifecycle replacement need and dire sanitary need is necessary to ensure that funds are used for their highest purpose. As stated above, the Agency, upon consideration of the comments, will modify section three of the proposed definition of dire sanitary need to include language allowing appropriate Federal and State Agencies to assess the level of need. In doing so, the Agency expects that such qualified and appropriate agencies will make determinations based on standard evaluative processes. This approach will allow for more consistent determinations and meet the requirements of the statute.

Issue 2: §1784.8(e) Eligibility – ANTHC and DEC request to delete some eligibility information as it relates to dire sanitation conditions.

Response: RUS disagrees with deleting the information in §1784.8(e) as it would be a disservice to the communities that face the highest health and safety issues related to inadequate sanitation services. The purpose of the language is to clearly identify the level of documentation needed by the Agency to make a proper determination of

eligibility for funding. RUS has placed an emphasis on health and dire sanitation needs to ensure that federal funds are used appropriately. In cases where there is scientific evidence or reports with substantiated evidence of associated health issues, documentation may be accepted from an appropriate federal agency such as the Center for Disease Control. The Agency is also adding language to address the concern that other situations may exist beyond the definition of dire sanitary condition in this regulation that have a negative impact on the health or safety of an eligible community. Specifically, the Agency is adding paragraph (f) to Section 1784.8 to allow applicants to request a special review and eligibility determination in individual cases where a proposed project does not meet the definition of “Dire sanitation condition” in §1784.2, and where the applicant is able to satisfactorily demonstrate that a water or sewer system is deficient and negatively impacts the health or safety of the community. The decision to review an eligibility determination request and any determinations made subject to this paragraph will not be subject to administrative appeal.

Through planning efforts, RUS will continue to work with ANTHC, DEC, and rural Alaskan communities to help plan sanitation projects. In the event that the project does not meet the dire sanitation condition definition, the planning documents created through a Predevelopment and Planning Grant, which is another grant program offered by RUS, can be utilized by the community to secure other funding through Rural Development’s water and waste program or elsewhere. The dire sanitation eligibility criteria will apply to design and construction projects.

Issue 3: §1784.10 - Eligible Grant Purposes: There are three issues related to eligible grant purposes in which both ANTHC and DEC provided suggestions, which are as follows:

Issue 3a. ANTHC suggests the proposed language for Reasonable Costs and Contingencies in §1784.10 (b)(1) is misplaced and should be modified to include a specific reference to “materials (including construction allowance) and freight.”

Response: RUS agrees that the proposed language is misplaced and will relocate the language to §1784.10 (a). However, RUS disagrees with the modification of reasonable costs. The Agency is concerned that if reasonable costs including construction allowances were allowed, scarce grant funds may be used for excess parts and fewer grant funds would be available for actual construction of infrastructure in communities in great need. RUS will work with applicants as needed with regard to occasional breakage and/or defects of materials.

Issue 3b. ANTHC suggests the proposed language for Training and Technical Assistance is not consistent with the Agriculture Appropriations Act and other documents.

Response: RUS agrees that technical assistance funds may be provided to other entities as designated in the annual appropriations. RUS proposes to amend the language in §1784.10(b)(1)(iii) to align with the language in the Consolidated Appropriations Act, 2014.

Issue 3c. ANTHC and DEC suggest the proposed rule limits installation of water and sanitation services to residential homes only and does not include public facilities except for those necessary for the successful operation and maintenance of the water and

sanitation system. It is suggested that the rule be revised to allow funding for water and sewer connections for facilities that provide health and social services and public facilities such as schools, school housing, public safety offices, health care facilities, government offices, etc.

Response: RUS disagrees with the proposed recommendations to modify the language in §1784.10(c)(1). While the authorizing statute 306D does not restrict RAVG funds to residential homes, it also makes no mention of offering these services to public facilities. RUS's interpretation of the statute's purpose is to provide infrastructure for water and wastewater systems and Alaskan village residents directly connected to those systems. The suggested facilities addressed by the commenters are, however, eligible under the Rural Development Community Facilities program whose eligibility includes public facilities. Refer to Community Facilities regulation §1942.17(d).

Issue 4: Grantee Accounting Methods, Management Reporting and Audits – ANTHC finds the proposed language confusing.

Response: RUS agrees that language in this section is confusing and will modify the language for simplicity.

Issue 5: Exception Authority – ANTHC recommends this section be expanded to allow the RUS Administrator flexibility to consider using funds on a case-by- case basis for additional installations that will promote access to public health services and sustainability of the system; and also recommends that RUS consider a delegation of exception authority to the Rural Development Alaska State Director.

Response: The request to broaden exception authority appears, from the comments filed, to be a vehicle to address concerns with what one or more commenters

see as a too restrictive definition of dire sanitary need. As stated earlier, the definition of dire sanitary need will be modified in the final regulation to address comments filed and should allow sufficient room for professional assessment and determination of dire sanitary need. This will negate a need for expanded exception authority. RUS's Exception Authority has traditionally been reserved for the Administrator because such exceptions are rare and have great potential to more broadly impact programs. The Agency is not convinced by the commenters that codification of a specific delegation to a State Director is necessary.

Issue 6: Compliance and Application Processing - There are three issues related to the compliance and application process noted by ANTHC. They are as follows:

Issue 6a: Revise §1784.18, §1784.20, and §1784.21 - ANTHC requests that §1784.18, §1784.20, and §1784.21 be revised to remove requirements that tribal applicants execute standard and other forms dealing with nondiscrimination requirements. It is also requested that §1784.21 be revised to eliminate the statement that all Rural Alaska Village grants are subject to USDA's civil rights regulations, particularly 7 CFR part 15 and 7 CFR part 1901, subpart E.

Response: The forms required for RAVG applicants seek information that is required by the Agency for processing and/or by the Office of Management and Budget (OMB) for grant programs. The forms are utilized in all Agency water and waste disposal programs and are routinely completed by tribal applicants. The commenter has provided no compelling reason for a special exception for RAVG applicants.

Issue 6b: Procurement by Applicants – ANTHC recommends modifying language in §1784.36 (a) to avoid confusion and to accommodate their current policies and

procedures regarding contracting and procurement. In addition, ANTHC is concerned that language in this section might be applied to prevent consideration of other factors that contribute to system sustainability and costs at another level.

Response: RUS agrees with the first recommendation made by ANTHC to revise the language of the proposed regulation with regard to procurement requirements §1784.36(a). The second sentence, “Procurement procedures shall not restrict or eliminate open and free competition” will be removed. This requirement is already inherent in the statement that the State of Alaska, Department of Environmental Conservation (DEC) and ANTHC will base procurement procedures on OMB Uniform Administrative Requirements which specifically address open and free competition. We do not, however, concur in the addition of a separate requirement to consider system sustainability in selection of materials. Consideration of “all materials normally suitable for the project based on sound engineering practices and project requirements” is not intended to be exclusive and should not prevent consideration of other non-regulatory factors, such as sustainability as appropriate.

Issue 6c. Information Collection and Record Keeping Requirements – ANTHC is concerned that estimated burden hours are too low and should be significantly higher. Specifically, they estimate “it takes 32 hands on hours to complete the documents taking into account the time it takes to work with rural communities, to complete and execute documents that require information or a signature from them.” They also state that many of the forms are redundant.

Response: RUS disagrees and believes that ANTHC is misinterpreting burden estimates prepared by USDA in a separate information and collection package required

under the Paperwork Reduction Act for this. ANTHC states in its comments that USDA's estimate of 2.5 hours is far too modest of an estimate for completion of required forms. The burden package developed for this regulation includes estimates for completion of each form or information requirement necessary to make application under the RAVG program. The aggregate burden is well above 2.5 hours.

Issue 7: Floodplains/Subpart C, § 1784.21(m) (Other Requirements) – Three commenters, ANTHC, DEC, and Ricky “Lance” Overstreet on behalf of US Army Corps of Engineers Alaska District Hydraulics Section, are concerned that specific language in this section will lead to narrow interpretations that could prevent the construction of water facilities, even where there is no undue threat of flooding.

Response: Federal Emergency Management Agency (FEMA) flood insurance policy and guidance allows the use of information obtained through consultation with the community, or flooding sources (that) have been studied by other Federal, State, or local agencies. Some of these studies do not meet the National Flood Insurance Program (NFIP) standards for a Flood Insurance Study, but often contain valuable flood hazard information, which may be incorporated into the NFIP maps as approximate studies. Those types of studies typically cover developed or developing areas. They often contain flood elevation profiles that can be used as “best available data” for floodplain management purposes (FEMA NFIP training module, Unit 3 NFIP Flood Studies and Maps). RUS therefore concurs with the comment and will revise the rule text accordingly.

Issue 8: Lead Agency Environmental Review – One commenter, ANTHC, suggests §1784.22 be clarified with regard to obligations under the National Historic Preservation Act and its regulations.

Response: RUS agrees that §1784.22 needs to be clarified and corrected as it applies to Section 106 of the National Historic Preservation Act (NHPA) and the implementing regulation found in 36 CFR Part 800. The Agency also acknowledges that there is not a “RAVG Section 106 process” as such, and reference to this will be deleted from the section text.

List of Subjects in 7 CFR Part 1780

Agriculture, Community development, Community facilities, Reporting and recordkeeping requirements, Rural areas, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Watersheds.

Therefore, for the reasons discussed in the preamble, RUS amends chapter XVII of Title 7 of the Code of Federal Regulations as follows:

PART 1780 – WATER AND WASTE LOANS AND GRANTS

1. The authority citation for part 1780 continues to read as follows:

Authority: 6 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005

§ 1780.49 [Removed and Reserved]

2. Remove and reserve §1780.49.
3. Add part 1784 to read as follows:

PART 1784 – RURAL ALASKAN VILLAGE GRANTS

Subpart A – General Provisions

Sec.

- 1784.1 Purpose.
- 1784.2 Definitions.
- 1784.3 Objective.
- 1784.4-1784.7 [Reserved]

Subpart B – Grant Requirements

- 1784.8 Eligibility.
- 1784.9 Grant amount.
- 1784.10 Eligible grant purposes.
- 1784.11 Restrictions.
- 1784.12-1784.15 [Reserved]

Subpart C – Application Processing

- 1784.16 General.
- 1784.17 Application for Planning grants.
- 1784.18 Application for Pre-development grants.
- 1784.19 Application for Construction grants.
- 1784.20 Applications accepted from DEC or ANTHC.
- 1784.21 Other forms and certifications.
- 1784.22 Other requirements.
- 1784.23 Lead Agency Environmental Review.
- 1784.24-1784.25 [Reserved]

Subpart D – Grant Processing

- 1784.26 Planning, development, and procurement.
- 1784.27 Grant closing and disbursement of funds.
- 1784.28 Grantee accounting methods, management reporting, and audits.
- 1784.29 Grant servicing and accountability.
- 1784.30 Subsequent grants.
- 1784.31 Exception authority.
- 1784.32-1784.34 [Reserved]

Subpart E – Design, Procurement, Construction, and Inspection

- 1784.35 General.
- 1784.36 Procurement by applicants eligible under this part.
- 1784.37 Procurement of recovered materials.
- 1784.38-1784.99 [Reserved]

Authority: 7 U.S.C. 1926d.

Subpart A – General Provisions

§1784.1 Purpose.

This part sets forth the policies and procedures that will apply when the Rural Utilities Service (RUS) makes grants under the Rural Alaska Village Grant (RAVG) program (7 U.S.C. 1926d) to rural or native villages in Alaska. The grants will be provided directly to a rural or native village or jointly with either The State of Alaska, Department of Environmental Conservation (DEC) or The Alaska Native Tribal Health Consortium (ANTHC) for the benefit of rural or native villages in Alaska.

§1784.2 Definitions.

The following definitions apply to subparts A through E of this part.

ANTHC means the Alaska Native Tribal Health Consortium.

CONACT means the Consolidated Farm and Rural Development Act.

DEC means the State of Alaska, Department of Environmental Conservation.

Dire sanitation conditions means:

- (1) Recurring instances of illness reasonably attributed to waterborne communicable disease have been documented or insufficient access to clean water creates a persistent threat of water-washed diseases; or
- (2) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies; or
- (3) An appropriate federal agency (such as the Centers for Disease Control and Prevention) or regulatory Agency of the State of Alaska determines that the drinking water and/or sewer system does not meet current regulatory requirements.

Grant recipient means an applicant that has been awarded a Rural Alaskan Village Grant under this part.

IHS means the United States Department of Health and Human Services, Indian Health Service.

Owner means Grant recipient.

RAVG means Rural Alaskan Village Grant, a grant awarded by RUS, DEC, and/or ANTHC to a grant recipient under this part.

Rural or Native Villages in Alaska means a rural community or Native village in Alaska which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the U.S. Census American Community Survey.

RD means Rural Development, a federal agency mission area delivering the United States Department of Agriculture's programs to rural communities.

Recipient community means a community that has been awarded a grant under this part.

RUS means the Rural Utilities Service, a federal agency mission area delivering the United States Department of Agriculture's rural utilities programs.

Short-lived assets means repair and replacement items expended each year that are not included in the annual Operational and Maintenance expenses as annual repair and maintenance.

Statewide nonmetropolitan median household income (SNMHI) means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

USDA means the United States Department of Agriculture.

VSW means Village Safe Water Program authorized under the Village Safe Water Act, Alaska Statute Title 46, Chapter 7 (AS 46.07).

§1784.3 Objective.

The objective of the RAVG Program is to assist the residents of rural or native villages in Alaska to provide for the development and construction of water and wastewater systems to improve the health and sanitation conditions in those villages through removal of dire sanitation conditions.

§§1784.4-1784.7 [Reserved]

Subpart B – Grant Requirements

§1784.8 Eligibility.

(a) Grants may be made to the following eligible applicants:

- (1) A rural or native village in Alaska; or
- (2) DEC on behalf of one or more rural or native village in Alaska; or
- (3) ANTHC on behalf of one or more rural or native village in Alaska.

(b) Grants made to DEC or ANTHC may be obligated through a master letter of conditions for more than one rural or native village in Alaska; however, DEC or ANTHC together with each individual rural or native village beneficiary shall execute a grant agreement on a project by project basis. Expenditures for projects will be based on specific scope and be requested on a project by project basis.

(c) For grants proposed to be administered directly by a community, the responsibility to meet the requirements outlined in this part will be met by the community. RUS will be the lead agency on direct administration projects.

(d) The median household income of the rural or native village cannot exceed 110 percent of the statewide nonmetropolitan household income (SNMHI), according to US Census American Community Survey. Alaska census communities considered to be high cost isolated areas or “off the road systems” (i.e. communities that cannot be accessed by roads) may utilize up to 150 percent of SNMHI.

(e) For design and construction projects: A dire sanitation condition as defined in §1784.2 must exist in the village served by the proposed project. For those projects identified under paragraphs (1) and (3) of the dire sanitation definition in § 1784.2, a notice of violation, consent order or other regulatory action from the appropriate regulatory agency must be provided to document the dire sanitation condition. In cases where there is scientific evidence or reports with substantiated evidence of associated health issues, documentation may be accepted from an appropriate federal agency.

(f) In individual cases where a proposed project does not meet the definition of “Dire sanitation condition” in §1784.2, an applicant may request a special review and eligibility determination from the RUS Administrator in cases where the applicant is able to satisfactorily demonstrate that a water or sewer system is deficient and negatively impacts the health or safety of the community. The decision to review an eligibility determination request and any determinations made subject to this paragraph are not subject to administrative appeal.

(g) In order for an eligible applicant to receive a grant under the Rural Alaska Village Grant program, the State of Alaska shall provide 25 percent in matching funds from non-Federal sources.

(h) In processing grants through DEC and ANTHC, a public meeting must be held to inform the general public regarding the development of any proposed project. Documentation of the public meeting must be received with construction applications.

(1) A notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

(2) For projects where there are no newspapers of general circulation, a posting of the notice in a community building (post office, washeteria, clinic, etc.) frequented by village residents may be used to meet the requirement. This alternative form of notice has been authorized by the RUS Administrator.

§1784.9 Grant amount.

Grants will be made for up to 75 percent of the project development and/or construction costs, which does not include project administrative costs. Pursuant to 7 U.S.C. 1926d, the State of Alaska shall provide 25 percent in matching funds from non-Federal sources.

§1784.10 Eligible grant purposes.

Grant funds may be used for the following purposes:

(a) To pay reasonable costs associated with providing potable water or waste disposal services to residents of rural or native villages in Alaska. Reasonable costs

include construction, planning, pre-development costs (including engineering, design, and rights-of-way establishment), and technical assistance as further defined below:

(1) Planning. Grants can be made specifically for planning report costs (including Master Plans, Feasibility Studies, and Detection or Source Studies) associated with the prioritization process.

(2) Pre-development. Grants can be made for pre-development costs such as preliminary engineering, environmental, application development, review and establishment of rights-of-way and easement, and full construction design for up to \$1,000,000 for each eligible village. Prior to approving additional pre-development costs, a preliminary engineering report (PER) and/or approved PER like document, such as the Cooperative Project Agreement and supplemental documents from ANTHC and an environmental report shall be reviewed and concurred by RUS, DEC, ANTHC, and IHS.

(3) Training and technical assistance. Grant funding for technical assistance and training will be available in accordance with Section 306D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926d) and appropriations current at the time of application. Grants for this purpose will be processed in accordance with 7 CFR part 1775.

(b) To pay reasonable costs associated with the use of a recipient community's equipment during construction. (i.e. maintenance, minor repairs, and operational costs). A cost accounting system that is accurate to track expenses must be in place. Use of ANTHC or State of Alaska equipment fleet rental costs will also be eligible. RUS concurrence in the allocation method is required.

(c) Individual installations. (1) Individual service installation relates to residential homes only and does not include public facilities or commercial facilities. The only exception to serving a public facility is when the facility is necessary for the successful operation and maintenance of the water or sanitation system (i.e. the facility utilized for accepting utility payments and/or holding public meetings for the utility system).

(2) Individual home installations, including wells, septic system, flush tank and haul, in-house plumbing, etc., may be provided. The following guidelines must be followed for individual installations. A certification will be required with the application that provides documentation of the following:

- (i) The residents are unable to afford to make the improvements on their own.
- (ii) An agreement outlining the installation, operation, and maintenance of facilities must be in place.
- (iii) An adequate method for denying service in the event of non-payment of user fees if such fees are required.
- (iv) All residents of the community are treated equally.
- (v) The improvements provided are reasonable and modest.
- (vi) Legal authority (i.e. easements) is obtained to construct these improvements.
- (vii) Documentation must be provided to RUS indicating the quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with initial and long term user costs on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit of regulatory agency requirements.

§1784.11 Restrictions.

Grant funds may not be used to:

(a) Pay any annual recurring costs that are considered to be operational expenses of a facility.

(b) Pay basic/rental fee or depreciation for the use of the recipient community's equipment.

(c) Purchase existing systems.

(d) Pay for items not associated with Rural Utilities Service's approved scope of work. This includes projects developed from other funding sources.

(e) Except as provided in this part, finance any public or commercial facility.

§§ 1784.12-1784.15 [Reserved]

Subpart C – Application Processing

§1784.16 General.

(a) DEC and ANTHC utilize the National Indian Health Service, Sanitation Deficiency System (SDS) database as a comprehensive source of rural sanitation needs in Alaska. The database provides an inventory of the sanitation deficiencies including water, sewer, and solid waste facilities for existing homes. The sanitation deficiencies data are updated annually by DEC and ANTHC in consultation with the respective rural or native villages. The SDS system is utilized in the RAVG program to help prioritize applications under the Village Safe Water Program.

(b) A prioritized list of projects will be developed each year by RUS, DEC, and ANTHC applying prioritization criteria to the sanitation needs database. Prioritization criteria established by the RUS, DEC, ANTHC, and IHS will be based, at a minimum, on relative health impacts, drinking water and wastewater regulatory requirements, the sanitation conditions in each community and project readiness. The VSW Program process and associated prioritization criteria will be used to prioritize projects and place them on a priority list. The process will be reviewed and approved by RUS, DEC, ANTHC, and IHS. Projects will be funded from the priority list as they meet established planning, design, and construction requirements, subject to available funding.

§1784.17 Application for Planning grants.

(a) Entities identified in §1784.8 of this part may submit a completed Standard Form 424 to apply for funding to establish a Planning report for a rural or Native village.

(b) Funding for planning grants will be allocated annually by RUS, DEC, and ANTHC according to the prioritization list described in §1784.16(b) of this part.

§1784.18 Application for Pre-development grants.

(a) Entities identified in §1784.8 of this part may submit a completed Standard Form 424, Standard Form 424A, and Standard Form 424B to apply for funding for pre-development costs. Pre-development costs are described in §1784.10 (a)(1)(iii) of this part.

(b) Funding for pre-development grants will be allocated annually by RUS, DEC, and ANTHC according to the prioritization list described in §1784.16(b) of this part.

(c) Projects submitted for design only under the pre-development grant, must have RUS approval of a planning or pre-development report prior to consideration for funding.

§1784.19 Application for Construction grants.

(a) An application for a construction grant shall include:

(1) Completed Standard Form 424, Standard Form 424C and Standard Form 424D. Current versions of these forms may be found at Grants.gov.

(2) Preliminary Engineering Report, Environmental Report, or approved PER like document, including ANTHC's Cooperative Project Agreement and associated supplemental attachments;

(3) Population and median household income of the area to be served;

(4) Description of the project; and

(5) Approved business plan, including resolution adopting the plan, for the recipient community. The business plan will outline the proposed operation and management costs, rate structures, short-lived asset schedule and associated materials.

(6) Projects submitted for construction must have RUS and ANTHC or DEC approval of a planning or pre-development report prior to consideration for funding.

(b) Funding for construction grants will be allocated annually by RUS, DEC, and ANTHC according to the prioritization list described in §1784.16(b) of this part.

§1784.20 Applications accepted from DEC or ANTHC.

(a) In cases where applications are accepted from DEC or ANTHC, one master application may be submitted covering all rural or native villages to be funded, however, each individual project will be broken out and (for construction grants) each will require its own PER, or PER-like document and Environmental Report.

(b) Each project will be processed individually with individual grant agreements, as appropriate.

(c) Expenditures for projects will be based on specific scope and be requested on a project by project basis.

(d) Funding amounts, as indicated in each grant agreement and letter of conditions, will be for the approved scope of work.

§1784.21 Other forms and certifications.

(a) Referenced bulletins, instructions and forms are for use in administering grants made under this part and are available from any USDA/Rural Development office or the Rural Utilities Service, U. S. Department of Agriculture, Washington, D.C. 20250-1500.

(b) Applicants will be required to submit the following items to the processing office, upon notification from the processing office to proceed with further development of the full application:

(1) Form RD 400-1, Equal Opportunity Agreement;

(2) Form RD 400-4, Assurance Agreement;

(3) Form AD 1047, Certification Regarding Debarment, Suspension and other Responsibility Matters;

(4) Form AD 1048, Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions;

(5) Form AD 1049, Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I for Grantees Other Than Individuals;

(6) RUS Form 266, Compliance Assurance form or written self-certification statement – Civil Rights Compliance;

(7) Standard Form LLL, Disclosure of Lobbying Activities;

(8) RD Instruction 1940-Q, Exhibit A-1, Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

(9) Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under this part to accept electric service as a condition of receiving assistance.

(c) In the case of grants made to DEC and ANTHC, DEC and ANTHC will certify that the above requirements are included in their agreements with the Villages. The certification and forms listed above must be provided from DEC and ANTHC on an annual basis for utilization in proposed applications.

(d) When favorable action is not taken on an application, the applicant will be notified in writing by the Rural Development State Program Official of the reasons why the request was not favorably considered. Notification to the applicant will state that a review of this decision by the Agency may be requested by the applicant in accordance with 7 CFR Part 11.

(e) When favorable action is taken on an application, the applicant will be notified by a letter which establishes conditions that must be understood and agreed to before further consideration may be given to the application. In cases where a master application is submitted by DEC or ANTHC, the letter of conditions will include all projects, and their funding amounts, included in the master application on which favorable action will be taken. The letter of conditions does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. The grant will be considered approved on the date a signed copy of Form RD 1940-1, Request for Obligation of Funds, is mailed to the applicant.

§1784.22 Other requirements.

Other Federal statutes and regulations are applicable to grants awarded under this part. These include but are not limited to:

(a) 7 CFR part 1, subpart A—USDA implementation of Freedom of Information Act.

(b) 7 CFR part 3—USDA implementation of OMB Circular No. A-129 regarding debt collection.

(c) 7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

(d) 7 CFR part 1794, RUS Implementation of the National Environmental Policy Act.

(e) 7 CFR part 1901, subpart E—Civil Rights Compliance Requirements.

(f) 2 CFR part 200—Uniform Guidance.

(g) 2 CFR part 215—General Program Administrative Requirements.

(h) 2 CFR part 418— New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(i) 2 CFR parts 400 and 415—USDA implementation of Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(j) 2 CFR part 180, as adopted by USDA through 2 CFR 417, Government-wide Debarment and Suspension (Non-procurement); 2 CFR part 182, as adopted by USDA through 2 CFR 421, Government-wide Requirements for Drug-Free Workplace (Federal Assistance), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

(k) 2 CFR Part 200, Subpart F —USDA implementation of audit requirements for non-federal organizations.

(l) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs.

(m) Floodplains. The agencies follow the eight-step decision-making process referenced in Section 2(a) of Executive Order 11988, Floodplain Management, when undertaking actions located in floodplains. Pursuant to E. O. 11988, the IHS uses a Class Review process to exclude certain actions from further review under the eight-step process. For all actions that do not qualify for IHS Class Review, the eight-step process shall be completed. All practicable measures to minimize development in floodplains

and reduce the risk to human safety, health, and welfare shall be followed, including elevating a new water or wastewater facility at least one foot above the base flood elevation as determined by the Army Corp of Engineers, other qualified survey, or best available data. Since they are considered “critical facilities” as defined by the Federal Emergency Management Agency (FEMA), water and wastewater facilities may be subject to more stringent standards such as relocation out of the floodplain, higher elevation, or other flood proofing measures. If an area has been designated a floodplain by FEMA Flood Insurance Rate Map (FIRM) coverage, flood insurance shall be required for facilities located in flood plains. If an area has no FEMA FIRM coverage the requirement to obtain flood insurance does not apply. If a community is located within a mapped FEMA Flood Insurance Rate Map (FIRM) 100-year floodplain, but is not a participating National Flood Insurance Program (NFIP) community member, then RUS may not fund the project according to 7 CFR 1806 Subpart B.

(n) Project planning, including engineering and environmental reports, to the maximum extent feasible, must address all water and/or waste disposal needs for a community in a coordinated manner with other community development projects and take into consideration information presented in available community strategic and comprehensive plans. Any reports or designs completed with funds must be completed in accordance with sound engineering practices and USDA regulations, including RUS NEPA regulations at 7 CFR Part 1794.

§1784.23 Lead Agency Environmental Review.

(a) The Agency designated as the lead agency for the purposes of this grant program, will fulfill and agree to be responsible for complying with lead agency requirements for:

(1) National Environmental Policy Act (NEPA) as outlined in 40 CFR 1501.5,
Lead agencies;

(2) National Historic Preservation Act (NHPA) Section 106 review process as outlined in 36 CFR Part 800.2(a)(2) Lead Federal agency; and

(3) Section 7 of the Endangered Species Act as outlined in 50 CFR 402.07,
Designation of lead agency.

(b) All environmental findings and determinations made by the lead agency represent those of the cooperating agencies and will be completed in accordance with the procedures outlined in this section.

(c) RUS will, to the extent possible and in accordance with 40 CFR 1506.2 and 7 CFR 1794.14, or successor regulation, actively participate with DEC, IHS, and ANTHC to cooperatively or jointly prepare environmental documents so that one document will comply with all applicable laws.

(d) For projects administered by DEC and ANTHC, RUS agrees to participate as a cooperating agency in accordance with 40 CFR 1501.6 and 7 CFR 1794.14 and relies upon those agencies' procedures for implementing NEPA as further described below.

(e) The lead agency will indicate that RUS is a cooperating agency in all NEPA-related notices published for the proposed action.

(f) A construction grant may not be approved until all environmental findings and determinations have been made according to the following:

(1) Rural Development Lead Agency. If RUS is the lead agency the environmental review process, including all findings and determinations, will be completed in accordance with 7 CFR 1794.

(2) DEC Lead Agency. In the event DEC is the lead agency, the environmental review process, including all findings and determinations will be completed in accordance with the environmental review process outlined in Appendix A to the June 15, 2011 MOU.

(3) IHS Lead Agency. For projects administered by ANTHC, IHS will be the lead agency for the environmental review process, including all findings and determinations. The environmental review process, including all findings and determinations will be completed in accordance with the Department of Health and Human Services policies and procedures in General Administration Manual, Part 30, Council on Environmental Quality regulations at 40 CFR 1500-1508 and with procedures published by IHS in the Federal Register, Vol. 58, No.3, page 569, January 6, 1993. The ANTHC shall notify the funding agencies and the IHS if a change in the project or project scope occurs which could change any previously prepared environmental findings or determinations or could adversely impact the environment. In the event of an unanticipated discovery of a historic property or other environmental resource, the ANTHC shall stop construction activity in the area of the discovery and notify the appropriate authority and the IHS. Mitigation options resulting from unanticipated discoveries, including but not limited to changes in project scope or cancellation of the project will be evaluated by the funding agencies in collaboration with the ANTHC and IHS. If appropriate and necessary, mitigation plans will be negotiated and approved by

all parties. When the funding agencies have approved a mitigation plan and IHS has reaffirmed its environmental review process, including all findings and determinations, the ANTHC will be authorized to initiate the agreed to mitigation plan. The IHS shall bear no mitigation costs as it is not a funding agency for projects under this part.

(g) RUS will have an opportunity to review the IHS or DEC environmental review documents, including all findings and determinations to ensure consistency with this part and agency procedures. Where an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required by the lead agency's environmental policies and procedures, the lead agency will ensure that the scope and content of the EA or EIS satisfies the statutory and regulatory requirements applicable to RUS. Where an EA and EIS is not required under the applicable lead agency's procedures for implementing NEPA, the review by RUS will be limited to ensure that the applicable lead agency's procedures were followed.

(h) The National Historic Preservation Act Section 106 review requirements completed for ANTHC administered projects will be carried out in accordance with the process described in Appendix B of the June 15, 2011 MOU.

§§ 1784.24-1784.25 [Reserved]

Subpart D – Grant Processing

§1784.26 Planning, development, and procurement.

(a) If RUS is the lead agency and will provide oversight for the project, a certification should be obtained from the State agency, or the Environmental Protection Agency if the State does not have primacy, stating that the proposed improvements will

be in compliance with requirements of the Safe Drinking Water Act and/or Clean Water Act and the applicable requirements of 2 CFR part 200 and 2 CFR part 400.

(b) Applicants that will bid and construct a project in phases, must provide assurance that the full scope of each specific phase of the project will be functional. In the event that the actual cost is anticipated to exceed the funding originally allocated for the project, all potential options will be reviewed and considered, including but not limited to acquiring additional funds or a reduction in project scope. RUS, ANTHC, and VSW will ensure that all items that were funded and within the scope of the project, including all phases, are functional when all funds have been disbursed.

§1784.27 Grant closing and disbursement of Funds.

(a) The Water and Waste Grant Agreement for rural and native villages in Alaska, or other approved form(s) will be executed by all applicants. To view all forms and agreements, refer to the USDA RUS Water and Environmental Programs web site.

(b) Grant funds will be distributed from the Treasury at the time they are actually needed by the applicant using multiple advances. Instructions regarding disbursement of funds can be found in the Letter of Conditions.

(c) If there is a significant reduction in project costs, the applicant's funding needs will be reassessed. Decreases in RUS funds will be based on revised project costs and current number of users. Other factors, including RUS regulations used at the time of grant approval, will continue to be used as published at the time of grant approval. Obligated grant funds not needed to complete the proposed project will be deobligated. In such cases applicable forms, the letter of conditions, and other items will be revised.

§ 1784.28 Grantee accounting methods, management reporting, and audits.

(a) All Agency grantees will follow the reporting requirements as outlined in 7 CFR 1782.

(b) Other reporting requirements are as follows:

(1) During the construction period, for the reporting of expenses incurred for projects under this part, the party responsible for the administration of the project will complete an audit report in accordance with §1782.10 (which includes GAGAS and 2 CFR part 200 Subpart F “Audit Requirements”). RUS may request a copy of this report.

(2) After the construction period and for the life of the facility, the recipient community will be responsible to meet the requirements outlined in 2 CFR parts 200, 400, 415, 416, and 7 CFR part 1780.47 paragraphs a through d. These requirements must be outlined in funding documents from RUS, ANTHC, and VSW and in agreements with the recipient communities. RUS may request this information for the life of the facility.

(c) The requirements found in 2 CFR parts 200, 400, 415 and 416 shall apply to all grants made under the RAVG program and shall be set forth in the respective grant agreement where required.

§1784.29 Grant servicing and accountability.

(a) Grants will be serviced in accordance with 7 CFR part 1782.

(b) RUS reserves the right to request and review project files from grantees at any time.

(c) If at any time an application is determined ineligible, 7 CFR part 11 will be followed.

§1784.30 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this part. The initial and subsequent grants made to complete a previously approved project must comply with the maximum grant requirements set forth in §1784.8(f) of this part.

§1784.31 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's best interest.

§1784.32-1784.34 [Reserved]

Subpart E – Design, Procurement, Construction, and Inspection

§1784.35 General.

This subpart is specifically designed for use by owners including the professional or technical consultants or agents who provide assistance and services such as engineering, environmental, inspection, financial, legal or other services related to planning, designing, bidding, contracting, and constructing water and waste disposal facilities. The selection of engineers for a project design

shall be done by a request for proposals by the applicant. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this subpart, an owner is defined as the grant recipient.

§1784.36 Procurement by applicants eligible under this part

(a) For applicants eligible under §1784.8(a)(2) and (3), contracting and procurement activities will follow DEC or ANTHC policies, procedures and methods which are based on and shall follow Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). In specifying materials, DEC and ANTHC will consider all materials normally suitable for the project based on sound engineering practices and project requirements.

(b) Contracts for procurement must contain applicable contract provisions listed at Appendix II to 2 CFR part 200.

(c) For grants proposed to be administered directly by applicants eligible under §1784.8(a)(1), the requirements outlined in 7 CFR part 1780, subpart C will be met by those eligible applicants with the exception of the following requirements:

(1) Preliminary engineering reports and Environmental Reports (§1780.55).

Refer to the requirements of this subpart and subpart C §1784.22(n).

(2) Metering devices in §1780.57(m).

(3) Utility Purchase Contracts in §1780.62.

(4) Sewage treatment and bulk water sales contracts in §1780.63.

§1784.37 Procurement of recovered materials.

When a grant is made to the DEC, the state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§§ 1784.38 – 1784.99 [Reserved].

Dated: _July 28, 2015_

Brandon McBride
Administrator

Rural Utilities Service

[FR Doc. 2015-21122 Filed: 8/31/2015 08:45 am; Publication Date: 9/1/2015]